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Western Growers Association

Serving the California and Arizona Fresh Produce Industry



September 23, 1999

Mr. Rich Breitenbach
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Re: CALFED Bay-Delta Program Draft Programmatic EIS/EIR
Revised Phase II Report (June 1999)

Dear Mr. Breitenbach:

Western Growers Association (WGA) is an agricultural trade association whose members grow, pack and ship the majority of the fresh vegetables, as well as a significant amount of the fresh fruit and nuts produced in California and Arizona. On behalf of our membership, WGA appreciates the opportunity to provide for consideration the following comments on the CALFED Bay-Delta Program draft Programmatic EIS/EIR (EIS/EIR) and Revised Phase II Report. The issue areas addressed are not necessarily listed in order of priority, nor are all issues of interest to WGA necessarily noted.

WGA, since the inception of CALFED, has been supportive of this effort to address once and for all the problems facing the Sacramento-San Joaquin Bay-Delta (Bay-Delta). Water users agreed to a reduction in water supply to benefit the environment while such a plan was being developed. This interim water supply reduction was agreed to with the understanding that the goal of CALFED was to ensure that everyone "got better together". Somehow the concept of "getting better together" fell by the wayside, as a review of the CALFED documents released in June makes evident.

Water users have experienced the loss of more than one million acre-feet of water during the last decade. It is a fact that California currently does not have a sufficient water supply to meet all beneficial uses in a "normal" water year. It is a fact that California's population is expected to increase by as many as 15 million more people by the year 2020. It is also a fact that an increase in supply is needed to replace the water lost and to meet the needs of the expected increase

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in population. In fact, available water supplies today are less than at the time of the Accord, with further reductions almost certain (Trinity River Restoration) if corrective action is not taken. Water conservation, water transfers, recycling, the idling and retirement of farmland, and other strategies such as additional groundwater storage, can only go so far in meeting this demand. It is with great disappointment that WGA has noted that the EIS/EIR does not contain a definitive finding on the need for surface water storage. How is it possible that CALFED does not have sufficient information to make such a finding?

CALFED was formed to develop a comprehensive long-term solution to the environmental problems and water conflicts in the Bay-Delta. CALFED has failed in this regard with an EIS/EIR focused on the short-term. It is further a major concern to WGA and our members that CALFED is, in our opinion, headed in the wrong direction. Action must be taken to reverse this direction if CALFED is to succeed.

Recent actions by federal agencies, such as the Delta Smelt crisis in July and (b)(2), have severely shaken the confidence of water users in the CALFED Bay-Delta Program. WGA calls upon federal regulators to operate both to the letter and the spirit of the Bay-Delta Accord.

Governor Gray Davis and Secretary of the Interior Bruce Babbitt have pledged their personal commitment to move forward on the CALFED Bay-Delta Program. WGA welcomes the active involvement of Governor Davis and Secretary Babbitt. WGA is committed to working with the Davis Administration and the CALFED agencies to address the many unresolved issues remaining prior to the finalization of the EIS/EIR and the Record of Decision (ROD).

Balance

The separate CALFED agencies must be held accountable to make both individual and collective decisions that are consistent with a set of balanced principles. California needs a Bay-Delta Program that is equitable and balanced between the needs of cities, farms and the environment. CALFED's decision as to how to proceed, as contained in the ROD, will affect millions of people and greatly impact the future prosperity of this state.

- WGA believes that water supply and water quality are just as important to California's citizens as is addressing ecosystem needs. While CALFED gives lip service to the importance of water supply and water quality, the EIS/EIR offers little assurance that deficiencies in the current system will be addressed, let alone our need to expand the water supply system to meet future population growth.

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A substantial quantity of water has been dedicated to the environment as per the Accord, as well as more than \$1 billion in ecosystem financing. Water users supported the Accord, and later funding for ecosystem restoration. We believed that the promised "bundling" of actions would put water supply and water quality on equal footing with the environment, and provide for continuous progress and improvement in all three areas. This has not proved to be the case, much to our disappointment. The implementation plan must "bundle" ecosystem restoration, water supply, and water quality actions in a manner that ensures that all incrementally benefit.

Consensus

Consensus-based, broadly supported solutions are the best way to guarantee an end to longstanding conflicts. However, CALFED has allowed consensus to delay decisions by defining "consensus" in a manner that grants veto power to those with extreme views.

WGA supports return to a negotiated process that closely involves stakeholders. There does, however, come a point where strong policy leadership is needed to ensure that decisions, which need to be made, are made. When there is no agreement among stakeholders, joint state and federal decision-making guided by balanced principles should come into play. The delay in making decisions on issue areas of vital importance to the future of the state, such as how we can best meet our current and future water needs, has put CALFED at risk.

EIS/EIR Deficiencies

WGA appreciates the time and effort involved on the part of CALFED staff to develop the Bay-Delta Program EIS/EIR to this point. However, while WGA understands that development of the EIS/EIR was indeed an undertaking of great magnitude, it is also our belief that CALFED has produced an inadequate EIS/EIR. Not only does the EIS/EIR lack sufficient detail in those (short-term) areas addressed; it also does not address the long-term.

The CALFED draft programmatic EIS/EIR lacks the level of detail needed in key issue areas to allow for thoughtful and deliberative comments. For example, one such issue area of interest to agriculture is the total number of acres of farmland and acre-feet of water that will be lost as a result of proposed CALFED initiatives. What is the cumulative impact of these losses? Another issue area of great importance to all water users is the question of water supply. The EIS/EIR sidesteps every important decision that needs to be made regarding additional storage and conveyance facilities to meet existing water needs – let alone the needs of another 15 million Californians expected in the next 20 years.

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The CALFED Bay-Delta Program must be comprehensive and detailed. Stakeholders must know that all risks and benefits will be shared, and that benefits will be phased in for all. This needs to be spelled out in black and white. There must be no outliers that adversely affect water users through unilateral action under the Central Valley Project Improvement Act, the federal Endangered Species Act, or other statutes.

CALFED's Programmatic EIS/EIR must contain the necessary analysis and findings to ensure, among other things, that potential projects can be implemented without additional programmatic analysis and delays. As it stands now, the approach of project-by-project approvals virtually guarantees that controversial aspects of the Bay-Delta Program will have a difficult, if not impossible, time moving forward. Planning, design, and potential construction of elements of storage and conveyance contained in the preferred alternative must proceed while the common elements are being implemented.

Assurances

CALFED has not fully addressed operating assurances and regulatory assurances, and it is vital that CALFED does so. Operating assurances set forth in operating agreements must include specifics covering all aspects of operation. Operating assurances must provide incidental take authorization sufficient to allow take of all covered species resulting from the operations of the system when it is operating within the terms of the negotiated operating agreement.

An agreement extending the Accord and Accord protections, and an agreement spelling out commitments to meet any additional environmental flows and/or operating criteria through water acquisitions or the Environmental Water Account is also needed.

Implementation agreements are needed to address a variety of issue areas including: 1) a schedule for funding and implementing all elements of the CALFED Program; 2) provisions for all Substage 1A projects to be agreed to and fully described at the time of the ROD; 3) a process which guarantees that Substages 1B and 1C will move forward in a balanced fashion; 4) financial strategies and principles, including cost-sharing arrangements between local, state, and federal entities with any user fees linked to demonstrated benefits and long-term benefits; and, 5) the governance structure.

The operating agreements and implementation agreements noted above, with others as determined necessary, will help rectify the deficiencies noted.

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Water Supply

The goal of CALFED should and must be a reliable and adequate supply of water for all beneficial uses.

An analysis of the Ag/Urban Caucus shows that the Bay-Delta Program at best might provide less than 200,000 acre-feet of new water, and at worst could actually reduce supply by another 700,000 acre-feet! Further reductions in agricultural water supply is unacceptable.

If CALFED is to gain the support of water users it must establish and pursue an increase in water supply, starting during the first seven years of the Bay-Delta Program. WGA supports the Ag/Urban Caucus recommendation of a near-term supply goal of 200,000 acre-feet per year (above the Accord), increasing to 400,000 acre-feet per year by the end of Stage 1. This near-term goal will help to begin replacing water lost to the environment.

South Delta Improvements/Conveyance

The primary source of non-reservoir water supply improvement identified in the EIS/EIR is South Delta improvements. Rather than extend implementation of South Delta improvements past Stage 1, CALFED should implement these actions during Stage 1.

Environmental water, it appears, is given priority for supply increases as a result of South Delta improvements. Any water supply improvements should be balanced between water users, water quality and the environment.

The EIS/EIR does not detail the conditions that will trigger the need for conveyance and other program actions, and does not provide for a clear process for the decision on the need for an isolated facility. WGA does not agree with CALFED on the deferral, to a future supplemental programmatic analysis, of this evaluation and decision process.

Water Storage

A combination of new groundwater and surface water storage is necessary to capture water during high runoff to improve water supply and water quality. Additional storage immediately adjacent to and south of the Delta has the greatest potential for producing improvements in both supply and quality in the near term.

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To maintain support for the Bay-Delta Program, CALFED needs to make a determination as to how much new surface storage and groundwater capacity will be required to accomplish program objectives and to meet the long-term needs of the state. To this end, CALFED must quantify the level of need for urban, agricultural and environmental uses. Both of these determinations must be made before the Record of Decision (ROD). CALFED should further move forward immediately, in Stage 1, on actions necessary to bring new storage on line.

Groundwater Storage/Management

The EIS/EIR lacks sufficient detail as to the potential beneficial and adverse impacts to groundwater resources as a result of CALFED activities. Groundwater modeling studies would seem to be called for. In addition, there is insufficient detail on conjunctive management planning in the EIS/EIR.

CALFED must coordinate conjunctive use programs with the appropriate local groundwater management agency. Local interests must be brought into the decision-making process for any proposed groundwater extraction proposal up-front if it is to gain local acceptance.

Agricultural Land and Water Resources

The draft EIR/EIS contains no detailed discussion of the CALFED strategy to avoid or mitigate impacts of the Bay-Delta Program on agriculture. References made to potential strategies are inadequate.

CALFED needs to spell out its efforts to avoid impacts on agriculture. As a first step, CALFED should attempt to utilize public lands prior to acquiring private property. If public lands are unavailable, conservation easements, rather than fee title acquisition, should be the first choice. All land acquisitions must be voluntary.

CALFED also needs to spell out the amount of agricultural water proposed to be reallocated and the amount of and location of agricultural land to be converted or retired. The CALFED analysis, if it is to be deemed adequate, must disclose the cumulative impact(s) of these losses.

Actions that remove farmland from production, either directly through conversion to habitat or indirectly through reduced water reliability, will directly impact rural California and indirectly impact the state as a whole. Local jurisdiction over land use decisions must be retained as it relates to short or long term fallowing, land retirement, and/or acquisition.

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California farms and ranches are an important part of the environment. Mitigation for loss of agricultural land and water, as required by CEQA, must be clearly addressed in the CALFED Bay-Delta Program. Providing information on how to "stretch existing water supplies in cost effective ways to keep water acquisition costs down" and "ways to increase the production yielded from a unit of water" is not mitigation. Clarity and a meaningful plan will be critical if CALFED is to gain the confidence of agriculture and rural California.

Water Rights/Area of Origin

The EIS/EIR must be revised to more clearly recognize California's area of origin statutes. In addition, the revised Phase II Report does not provide for quantification of area of origin needs. Ways to meet upstream area of origin needs, in ways that minimize impacts to downstream interests, need to be developed and included in the revised EIS/EIR.

Water Transfers

While there are those who say that water transfers are a solution to water shortages in California, it must be recognized that water transfers do not create "new" water; rather, transfers simply move water from one beneficial use to another. Voluntary transfers and exchanges can help solve some of the problems of water supply and allocation in the short-term. However, water storage and conveyance capacity must be enhanced before water transfers can play a meaningful role in resolving statewide water management issues.

WGA finds it difficult to understand why agencies would need to demonstrate efficient use of existing supplies before being allowed to sell water. Such a requirement could negatively impact short-term transfers made to secure funding to finance water-saving equipment and implement water use efficiency measures.

Another concern of WGA's relative to water transfers is that CALFED is greatly overestimating the amount of water that water users will be willing to sell, particularly during periods of drought. CALFED needs to take another look at the assumptions made in this regard.

Water Quality

WGA supports efforts to improve water quality for both drinking water and irrigation purposes. WGA believes that the establishment of interim water quality milestones, that do not establish new performance targets that conflict with existing lists of contaminants or numeric targets, is reasonable and should be

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included in the Bay-Delta Program. However, the addition of measures of practicability, including cost and feasibility, must be included in the equation when determining the appropriate interim water quality milestones.

WGA believes that the CALFED water quality program should focus on providing financial and technical support for the varied water quality programs already in place. Coordination with existing programs in areas such as water quality monitoring will be vital if resources are to be used to the best advantage.

Water Use Efficiency

The purpose of the Water Use Efficiency Program is to improve implementation of local water management actions that increase the achievement of CALFED goals and objectives. WGA appreciates CALFED recognition that grant funding will be needed to implement actions that are not cost effective on the local level. However, the Implementation Plan proposes to limit grant funding to projects in which the water produced is dedicated to in-stream flows. This requirement will, WGA believes, severely limit interest on the local level to go beyond those measures which are locally cost-effective.

WGA is concerned that the potential benefits of the Water Use Efficiency Program are being overemphasized and overstated. As with the previous comments on transfer transfers, WGA urges CALFED to look again at the assumptions made relative to water use efficiency.

It must also be recognized that in certain areas agricultural water use efficiency could well have adverse impacts. For example, reductions in groundwater recharge as a result of the application of less irrigation water. How water use efficiency is defined is important, as it must take into consideration varied uses of water such as the necessity of flushing accumulated salts from the root zone.

WGA questions the stated intent of CALFED to develop legislation to require appropriate measurement of water use for all water users in California. First, WGA believes it is inappropriate for CALFED to propose statewide actions that will impact individuals and entities outside of the CALFED solution area. More to the point, WGA questions what CALFED goals or objectives would be achieved by such measurement. Agricultural water districts already keep accurate records of water entering or leaving the district. CALFED needs to justify this proposal or it should be deleted from the Bay-Delta Program.

In addition, WGA does not agree with the concept put forward that widespread demonstration of efficient use be tied, as a prerequisite, to new surface water projects. This criterion ignores the other benefits provided by surface water

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storage, including water quality and ecosystem benefits. WGA does, however, believe it would be reasonable to link new storage with commitment to improved (as feasible) water use efficiency by identified beneficiaries of storage projects.

Environmental Water Account (EWA)

If an Environmental Water Account (EWA) is to be meaningful, it must be part of a larger water management package that mutually benefits water users and the environment.

The establishment of an EWA sounds good in theory. When the concept was first put forward all agreed that the idea had considerable merit and should be fleshed out. A key question that must be resolved is the issue of baseline. WGA is disturbed that it appears CALFED believes that the EWA is to provide additional benefits above: 1) the Bay-Delta Accord; 2) CVPIA; 3) the 1995 Delta Water Quality Control Plan; and, 4) existing ESA biological opinions.

WGA does not believe that this baseline meets the test of balance. If the EWA is to become part of the solution, it must provide relief from the regulatory burdens placed on the water projects, and must assume the full risk of its actions. Environmental water use must be budgeted, efficiently managed, be based on sound scientific justification, and operated to maximize benefits.

Water used for environmental purposes must be accounted for just as water for agricultural and urban purposes is accounted for. Dedication and acquisition of environmental water flows must be linked to a continuous scientific review process.

Science Review Panel

All environmental restoration actions should be based on the best available scientific or technical information objectively evaluated against accepted criteria. To this end, an impartial science review panel should be established to provide the needed oversight.

Affordable Solution and Equitable Cost Allocation

The long-term Bay-Delta solution must be affordable, and the allocation of costs must be equitable. Estimates run into the billions of dollars to accomplish all of the tentative projects arising out of CALFED, so the issue of financing is one of great interest to all stakeholders.

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Stakeholders must have a very specific understanding of the benefits they can expect from implementation of the CALFED Program. CALFED cannot expect participation in cost sharing absent identification of tangible, quantifiable benefits for each beneficiary group. The EIS/EIR does not even attempt to quantify any benefits to water users, so WGA believes that it is premature and unrealistic to assume the use of user fees.

Further, if CALFED proposes a fee that reflects benefits to users, there must be developed a system to provide credit for actions that water users have already taken (flow and non-flow measures) to protect and enhance the Bay-Delta ecosystem. Any such fee should sunset so that the funds are used solely for the specific purpose intended.

WGA does not support the concept of a broad-based Delta diversion fee. A Delta diversion fee to finance broad-based public benefit programs, such as the Ecosystem Restoration Program and the Environmental Water Account, violates the beneficiary pays philosophy.

Public financing sources should and must be the source of funding for programs that provide public or environmental benefits.

Ecosystem Restoration Program (ERP)

There are currently a variety of public (federal and state) and private programs whose purpose is ecosystem restoration. Considerable land acquisition to benefit the environment has taken place to this point in time. CALFED should, before moving to acquire new lands, consider the acquisitions by both state and federal agencies that have already taken place, and weave this patchwork of acquisition into a cohesive plan.

Once the accounting has been completed, the CALFED implementation plan should detail location, acreage, and proposed land uses as well a proposed acquisition schedule. The implementation plan should avoid adverse social and economic impacts on neighboring landowners and local communities.

WGA is concerned about the potential impact on landowners in the surrounding area of habitat restoration projects that seek to replicate natural processes. The ERP does not address these potential impact issues. WGA considers this an oversight that must be remedied in the revised document.

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Multi-Species Conservation Strategy

The Northern California Water Association (NCWA), with input from interested parties, has developed a proposed assurances program for landowners, public agencies and private organizations in connection with the Multi-Species Conservation strategy. Copies of this proposal have been submitted to various CALFED officials in the past.

WGA urges the CALFED agencies to review this document, and to incorporate its content into the existing Multi-Species Conservation Strategy framework as it undergoes revisions to add sufficient detail.

Comprehensive Monitoring, Assessment and Research Program (CMARP)

CALFED provides no details on the structure of CMARP, nor how it will be funded. This lack of detail raises a number of concerns.

WGA is at a loss to understand why there is research proposed to develop new crop varieties that increase yield while reducing inputs. Where does such research fit in with CALFED priorities?

Governance

CALFED has deferred selection of a governance structure and defining a process for deciding when and if program elements will be implemented. The issue of governance must be brought to closure. CALFED must finalize to governance structure before the ROD. Integrated decision-making and implementation must be an integral part of the governance structure.

Conclusion

Again, WGA appreciates the opportunity to provide comments on the EIS/EIS. As stated previously, WGA is committed to working with the Davis Administration and the CALFED agencies to address these unresolved issues. What do we need? Water users need assurances that specific water supply, water quality, infrastructure and operational objectives will be met before the program moves to Stage 1 implementation. It is WGA's hope that revisions to the EIR/EIS, combined with operating agreements and implementation agreements, will address the issue areas noted above in a balanced manner that restores the confidence of California agriculture and rural California in the Program.

Please contact Kathy Mannion, WGA Director of California Government Affairs, at (916) 446-1435 should you have any questions.